[G. R. S. IX-5]

Previous references.

1891-92 Police

File No. 6-9

191

Serial Nos. ~~Part II~~

Later referenc

Police

(11A)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for

SUBJECT. Railway Jurisd

Opinions of officers.

(Part I- II).

W D 88—GPB—50,000—24-7-16

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(~~Part I-II~~)

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11A

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

SUBJECT. Railway Jurisdiction Opinions of officers. (Part II).

W D 88—GPB—60,000—24-7-16

11

Railway Jurisdiction.

Opinions of Officers.

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Rec'd yesterday from
Madras and Submitted
for information

Honble P. Chentsal Row's Opinion

Note

The point on which I am asked to express my opinion is, I believe, whether H. H the Maharaja should at once cede to British Govt the plenary jurisdiction within the lands occupied by the Mysore State Railway as required in the Resident's Demi official dated 2d April 1891, or before ceding, he should make a further representation for the consideration of H. Excellency the Viceroy and the Secretary of State.

2. Considering the am

of inconvenience the proposed transfer of juris-
is likely to cause to the people of Mysore and the loss of prestige of H.H the Maharaja which the measure involves, I think we ought to seek a further consideration of the matter. It is my humble opinion that the reasons assigned for the transfer are so inadequate, that a full presentation of all the circumstances will ensure favorable consideration

3. The British Resident considers that under para 15 of the Instrument of Transfer "His Highness is bound if so required, to

transfer

transfer to the Governor —
General in Council plenar
jurisdiction within such —
(Railway) lands," but state
that "the question of right
has been purposely avoided
in the official correspondenc
as he (Resident) is confiden
that it will be much to the
credit of the state to yield
the cession of their own accord
We must be extremely —
thankful for the Considerati
shown to the feelings of H.H.
and I trust that the same
feeling will induce the Britis
Govt not to press the transfe
of the jurisdiction, if we can
show that para 15 of the
Instrument of Transfer
could not apply to the —
Mysore State Railway an
that

that no administrative

inconvenience can possibly

rise by allowing the present

state of things to continue.

The words of para 15 of the

Instrument of Transfer are

unmistakeably clear. It

says that "If British Govt.

at any time desires to

construct or work by itself

or otherwise, a railway in

the said (Mysore) territories,

the Maharaja of Mysore

shall grant free of all

charge such land as may

be required for that purpose

and shall transfer to the

Governor General in Council

plenary jurisdiction within

such land." These words

can have but one meaning

and

3/

s)

and that is, if the British
Govt construct any Railway
or take up the working of any
of the existing Railways for
State purposes, the Maharaj
is bound not only to give
plenary Jurisdiction but
also lands required for the
same free of charge. The
object of the obligation
imposed is clear. It would
be obviously improper for
a protected power to demand
price of land required by
the Paramount power for
State purposes and the
exercise of any power by
H. H the Maharaja over Railw
worked by the Paramount
power, would be inconsiste
with all principles of pro
-priety and decency.

These

These reasons cannot of course 6)
exist when a private individual
or Company or the protected
state constructs or works
a Railway and consequently
no provision was made for
the grant of lands in such
cases free of charge, or for
cession of power. It would
be simply absurd to say
that, if Messrs Arbuthnot & Co.
were to construct a Railway
within the Mysore territories,
the Maharaja is bound to
make them a free gift of
all lands required, and
yet this would be the
construction that would have
to be placed on para 15
of the Instrument of Transfer
if it is held to apply to
all

4/ 1)

all Railways whether Con-
-structed by the Paramount
power or by private Companies
or individuals

If however, it
Can be said that the Mysore
State Railway is now being
worked by the Govt of India
through the S. M. R Company,
then para 15 would certainly
apply, but the fact is that
S. M. R. Company is working
on behalf of the Mysore State
and not on behalf of the
Govt of India. This, the
British Resident admits
and states that "the ques-
-tion has not arisen out
of the transfer of the Mysore
State Railway to the —
S. M. R. Company and
is not immediately concerned
with the terms of that

Contract, as the request
for Cession of Jurisdiction
would certainly have been
made if the working of
the line had still remain
ed in the hands of the
Mysore Govt

If then, the Mysore
State Railway is not worked
by the Govt of India, neither
the reason nor the letter of
para 15 can be held applicable
to it, but it is unnecessary
to discuss this question of
right further, for, even if
the paragraph were more
definite in favour of H H
the Maharaja, he is bound
and will no doubt be —
willing to cheerfully comply
with the wishes of the British ~~Govt~~

Govt

Govt., if on Consideration
of all the circumstances,
they decide in favour of
transfer on grounds of ad-
-ministrative convenience.
Let us, therefore, merely
Consider whether the transfer
is likely to promote admin
-strative convenience which
is the chief object of the
Govt. of India to secure.

In his Demi Offia
dated 2d April 1891 the
Resident has given in detai
the various ways in which
the transfer would promote
administrative convenience
and I shall notice each
of them separately.

First, it is
stated that if Jurisdiction

be not ceded, it must be divided, which would be the source of great inconvenience. The Resident is evidently under the impression that, under the Railway Act of 1879, the Govt of India have exclusive jurisdiction over Her Majesty's subjects travelling on the Rail and that H.H Govt cannot, as the Law now stands, exercise any jurisdiction over them but can only do so over his subjects. I admit that, if the case be as has been supposed, that is, if H.H Govt have under the existing Law, no jurisdiction over British native subjects travelling in the Rail

6/ 111)

and if his power is confin
to the trial and punish
-ment of his own subject
the inconvenience will be
serious as it involves double
establishments and double
control, but the Resident's
supposition, I submit, is
not correct. Neither the
Railway Act of 1879 or the
more recent Act IX of 189
has taken away the power of
A A to deal with Railway
offences committed within
his territories by H.er —
Majesty's native subjects
It has only given con-
current jurisdiction to
British Govt to try those
cases, if they choose to do
so. Notwithstanding the —
Railway Acts of 1879 & 189

Mysore Govt. still possesses (12)
and is in reality exercising
the power of trying and
punishing all persons
committing offences within
the Mysore territory whether
they be Her Majesty's subjects
or H H own subjects. Thus,
the Railway Act, far from
creating a divided Control
has only given Concurrent
Jurisdiction to the British
Govt. which may be exercised
or not as it pleases and
no inconvenience can
possibly ~~exist~~ arise from the
non-exercise of the Jurisdiction.

Secondly, it is
stated that there would be

delay in the administrati
of Justice, if the Mysore
Govt were to continue to
exercise Jurisdiction, since
they will have to apply for
extradition when the party
committing the offences esca
into the British territory.
Here, I beg to point out
that as a rule perpetrator
of Railway offences are
caught on the spot and the
occasions to apply for —
extradition are very rare
Even in those rare cases
in which the offenders
escape into the British
territory, no application
for extradition would be
necessary, if the offender
happens to be a British

subject since he could (14)
be prosecuted under the
under the Railway Act, before
the British authorities
As regards the Mysore
subjects, the inconvenience
would be greater than less
when the proposed transfer
of jurisdiction is made,
as, when the transfer is
made, Mysore subjects
may easily escape into
the Mysore territory, in which
case the British Govt will
have to apply to Mysore
Govt for their ~~extradition~~
arrest.

Thirdly, it is remarked
that when the European
British subjects and

others are jointly charged
with the same offence
they would have, if the
transfer is not made, to be
tried by different Courts,
as no native Court could
try European British subject
This inconvenience is real
but is very small, as such
Cases are very rare and
the inconvenience can further
be easily avoided by investing
the Magistrates of the —
Mysore Govt with powers
of Justice of Peace. If
Mysore Govt is quite willing
to appoint European Mag-
-trates so that there may
be no difficulty in their
being vested with powers

of Justice of Peace. (16)

The last and no doubt the most important reason assigned for the proposed transfer, is that if Jurisdiction be not ceded, there could be no uniformity of procedure. This would be a strong objection, if the Mysore Govt were one in which the British system of administration is not force. But the case otherwise. Almost all Regulations in force the British Provinces in force in Mysore and the Mysore Govt not only willing but is so bound to introduce such further laws and

rules as may be prescribed by the Govt of India.

The Railway Act of 1879 is now in force in Mysore and the Mysore Govt will have no objection to cancel it and introd. Act IX of 1890. and al such subsidiary rules a may be suggested.

Thus, while no advantage is to be gain. by the transfer of Jurisdiction, it is certain that it will cause much inconvenience to the Mysore subjects as they will have to travell long distance for the trial of trivial offences

If, these, there can

possibly be no inconvenience
by the Continuance of the
Jurisdiction with the
Mysore Govt., and if on
the contrary, the transfer
is likely to cause delay
in the administration of justice,
we have every right, apart
para 15 of the deed of
transfer, to solicit a
re consideration of the
subject at the hands of
the Viceroy and the Secretary
of State and I am sure
our object in making
this representation will
not be misunderstood
It is true that other native
Princes have ceded
Jurisdiction within their

provinces, but the reason
that apply to other sta
do not apply to Mysore.
The Constitution of our
Govt is peculiar, its
administration is entir
on the lines of the British
administration; & the
Maharaja is willing an
is bound to adopt all
such Regulations as
may be prescribed by
the Govt of India; the
cession of jurisdiction wa
never contemplated when
the State Railway was
formed, on the contrary,
it has been all along
declared to be the inte
tion of the Govt of Indi

allow it to remain with
the Mysore Govt and
it has so long exercised
the powers without the least
inconvenience to any of the
parties concerned. All
these circumstances
entitle us to special
consideration which I feel
sure would not be denied
to us, when the matter
goes up to His Excellency
the viceroy and the
Secretary of State with
the support of the British
Resident which I feel
sure he will accord
under the foregoing
circumstances stated.

W. Meriwether 27/8/91

21) Opinion of the Legs of the Chief Cr
Railway jurisdiction in Mysore 101
(2)

The memo the Secretary in the Revenue Dept sent to Rev. with letter of 24 Aug.

The correspondence shows that neither the Foreign nor the Public Works Department of the Government of India has any objection to the continuance of the existing arrangements, under which the Police, Criminal and Civil Jurisdiction over the line of the Mysore State Railway is exercised by proper officers of the State, under the provisions of laws which are similar to those in force in British India. During the Railway conference, which took place in November 1889, Sir Charles Elliott, the then Public Works Minister, intimated that "So far as he knew the Government of India accepted His Highness the Maha Rajah's jurisdiction and did not press for any cession of Police, Civil or Criminal jurisdiction to itself." It was apparently on the faith of this assurance that Durbar agreed to carry out other extensions of Railway in Mysore. But the question of jurisdiction having been considered in the Legislative Department, it expressed an opinion, that it was "absolutely necessary, as a question of Imperial Policy, that the Government of India should exercise control over any Railway in a Native State which forms part of a line of continuous communication, and, in order to exercise that control, must have jurisdiction over it."

That

v)

That general control and supervision which the Government of India, as the Paramount Power, has undoubtedly a right to exercise over the Mysore Line, to ensure the general safety of the travelling public, is now being exercised and in a protected State like Mysore, where the Maha Rajah exercises the functions of Sovereignty, subject to the control of the British power which is represented by a Resident Political Agent, His Highness will always be guided by such advice as the Government of India may offer him on any subject connected with the Railway or other administration of the Province. In this manner, the Supremacy of the British power and the dependency of the Mysore Native State will always be maintained, and the Imperial Policy, under which it is considered necessary that the Government of India should exercise a general control over any Railway in this State, will be promoted.

* * *

2. We gather from the papers which have been placed before us, that the objection of the Government of India, to the Maha Rajah retaining jurisdiction over the Mysore Railway rests mainly on the grounds of administrative convenience and the limited jurisdiction of

our

our Courts. "We beg leave to show that the objections are not insuperable, that they may be overcome otherwise than by ceding jurisdiction. "We would respectfully suggest to the Durbar the propriety of making another representation for the favorable consideration of His Excellency the Viceroy in Council.

3. "Before we proceed to consider the objections urged in the Resident's letter, dated 2nd April last, we wish to set out a few facts relating to the Laws in force and the administration of Justice in the Province.

4. Almost all the important laws which are now in force in British India are in force in the Province. The Codes of Civil and Criminal Procedure, the Indian Penal Code, the Indian Succession Act, the Evidence Act, the Contract act, the Limitation, Registration, Stamp and Court Fees' acts are a few of the important Acts which are in force here. Secondly, we have every facility for modifying old laws and introducing new laws, inasmuch as we have a Legislative Secretary, whose duty it is to note the Proceedings of the Legislative Department

of the Government of India, so as to enable the Durbar to assimilate its laws so far as they are practicable, with the British Indian laws. Thirdly, since no existing law can be repealed or altered, without the previous consent of the Government of India, there is the practical impossibility of our making new laws so as to cause serious conflict between our laws and the laws of British India.

5. Our Courts are constituted on the same lines on which Courts in the Madras Presidency are constituted, and the powers and duties are regulated by Special Legislative enactments.

6. Our Civil and Criminal Judges are either men who have passed the B.A and B.L degree examinations of the Madras University, or men who have passed the Special Test examinations prescribed by the Madras Government as qualifications for the appointments of Subordinate Judges or Deputy Collectors, or men who have passed corresponding examinations prescribed

by.

by the Durbar.

7- If the existence of an independent Bar is a guarantee for efficient administration of Justice, we have also that guarantee in the Province. We have Advocates and Pleaders of 1st and 2d grades, enrolled under the provisions of an enactment passed for that purpose. The position and importance of the Bar of the Chief Court may be judged from the fact that the Advocate General of Madras, the Administrator General, the Crown Prosecutor, the Chief Judge of the Madras Small Cause Court, a member of the Madras Legislative Council, and the leading Advocates and Vakils of the Madras High Court, are Advocates of our Court to mention gentlemen who were called to the Bar in England and who have settled in the Province to practise in our Courts. We hold an annual examination in English for 1st and 2d grade Pleaders; and the text books prescribed by us are almost the same as those prescribed by the High Court

Court of Madras.

8. Judges in the Province are as indepen-
-dent of the Executive as Judges in any
part of British India.

9. We have our own reports of Cases
periodically published for the guidance
of Subordinate Courts and for the infor-
-mation of the public. The language of
the Court is English in the higher Courts, and
Judges of all grades are able to write
Judgments in English, and many of
them write judgments and orders and
record evidence in that language.

10. That our Judges are capable of
maintaining the dignity and impar-
-tiality of Courts is evident from the
fact that Europeans in the Coffee
and Mining Districts do freely resort to
our Courts and no complaint has been
made against any of the Judges or
against the system of administering
justice. An additional testimony to
the efficiency of our Judicial Officers
and of the system is afforded by the
fact that His Excellency the Viceroy
in Council has empowered Courts in

British

British India, and Courts established by His Excellency in other Native States to execute the decrees made and process-es issued by our Courts.

11. We hope that the facts briefly stated above, are sufficient to prove that the reign of law is supreme in the Province, that the Courts can do justice between Europeans and Natives and Natives and Natives, that they are capable of enforcing the laws which are now in force or which may hereafter be introduced, and that whether we consider the laws in force or the judicial system, or the character and qualifications of the men who have been appointed to enforce the laws, the Province need not fear a comparison with the Presidencies of Madras and Bombay.

12. We will now refer in detail to the objections urged in the Resident's letter to the continuance of the existing arrangements relative to Railway jurisdiction.

13. One of the main reasons assigned for the cession of jurisdiction is this:- Were jurisdiction not ceded, it must be divided; for, the Indian Railway act of 1879 (see section 1) extends to subjects of Her Majesty on all Railways in Native States independent of whether jurisdiction over the Railway has or has not been ceded by the Native States concerned Section 1 of the Indian Railway Act, cannot be construed as depriving our Courts of their jurisdiction to punish subjects of Her Majesty for offences committed within the limits of the Province, and if the offenders are apprehended within the said limits. This jurisdiction our Courts have always exercised and we do not see how there can be a divided jurisdiction in cases of this kind.

14- If British Subjects commit offence in the Province and escape into British India, they can be dealt with by our Courts under the provisions of the Extradition Act. And here we beg to make an extract from the Speech delivered by the Honorable

Sir

Sir James Stephen, when he introduced the Foreign Jurisdiction and Extradition Act of 1872 before the Legislative Council of the Government of India. The Honorable Member stated that "it was introduced with the view of rendering the administration of justice more expeditious than at present." He also explained the object of the legislation in these words:— "As regards British Subjects who made themselves liable to punishment and left the State and came into British Territory, they will be liable to be arrested and handed over to the Political Agent in that State, who might in the case of every such British Subject (not being a European British Subject) direct him to be tried by the Courts of the Territory in which the offence was committed, if the Government of India consented to that arrangement. The effect would be, that those States which established a regular system of administration

of

of justice would be placed in a posi-
-tion by which they would be, authori-
-zed to try offences committed in their
States by native British Subjects -
European British Subjects in native
States would be placed on the same
footing as that in which they stood
in regard to offences committed by
them in other parts of the country".

15- When act ~~XXI~~ of 1879 (now in
force) was passed, a further amend-
-ment was made to facilitate the
arrest of offenders, and to avoid delay
The necessity for the amendment was
explained as follows in the State-
-ment of objects and reasons: —

"The 8th Section of the English
Extradition Act of 1870 empowers a
Magistrate, when any person is charged
with having committed an offence
abroad, to issue a warrant of arrest
in anticipation of a request being
made for extradition by the State
within whose limits the offence has
been committed - Sections 19 and 20

of

of act VII of 1854 contained similar provisions but they were omitted in act XI of 1872, the present Extradition Act which consolidated and amended the existing law on the subject. Certain recent cases in which persons have committed offences in the Nizam's Territory, and taken refuge in British India, have shown that some such provisions are still required to prevent failures of justice. The present Bill, which has been prepared to meet this want, practically re-enacts, with certain unimportant modifications, what was the law in India up to the year 187

16. We have made this long extract to show firstly, that the intention of the Government of India, in enacting the Extradition Act was to give more facilities to Native States to bring to trial in their own Courts subjects of Her Majesty who committed offences in those States; secondly, that it is the avowed policy of the British Government not to put all Native States on a footing of equality but to make distinctions among them and, thirdly, that the ground of distinction is the introduction of good laws and

the

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the establishment of capable and upright judiciary to enforce them. If we have shown as we flatter ourselves that we have shown that, in all essential particulars, no distinction can be made between our Courts and the Courts in the neighbouring Presidencies, we conceive that we have made out a good case for according an exceptional treatment to Mysore. We may justly claim to exercise the jurisdiction we have been exercising and we may also claim further extension of our jurisdiction.

17. A difficulty arises if offences not specified in the Schedule to the Extradition Act are committed in the Province and if the offenders escape into British India. To meet such exceptional cases, we would respectfully suggest to the Durbar to apply to His Excellency in Council to include offences under the Railway Act in the said Schedule. We venture to think that it is a natural development of the liberal policy of the Government of India as indicated in the Speech of the Honorable Sir J. Stephen, and that it is a fitting

recognition

207

recognition of the endeavours of the Durbar to make their Courts as efficient as possible.

18. It is well known to the Durbar that European Coffee Planters are put to great inconvenience and expense by the escape of Coolies to neighbouring British Districts and by the powerlessness of our Courts to arrest them and to bring them to justice. We would respectfully take this opportunity of urging the Durbar to make an application to His Excellency the Viceroy to consider the propriety of extending the scope of the Schedule.

19. It is said that delay would occur in the administration of justice, in cases in which application has to be made for Extradition from British Territory. Such cases would be very few and far between. In a vast number of cases, there need be no necessity for making an application for Extradition. Since 1881, when the Mysore Railway was first opened, there have been scarcely any offences committed

on

on the line for which the Durbar had to apply for extradition. Such applications have been also very few even in regard to offences committed in other parts of the Province. A Statement, showing the number of cases in which extradition has been applied for during the past five years, is appended for information. It is only when grave crimes are committed and when offenders elude the vigilance of our Police and take refuge in British India that we have to apply for extradition. In such cases, of course, whether the offence is committed on the Railway line or elsewhere within the Mysore Territory, there will be some delay, which is unavoidable.

20. With regard to the Railway offence generally, we beg to remark that, with the facilities afforded by Sections 47 & 49 of the Act, (IV of 1879), for the arrest and detention, without any warrant or written authority, of offenders, by any Railway Servant or Police Officer, or any other person whom such Railway

Servant

Servant or Police Officer may call to his aid, there is little or no chance of persons committing offences on the line absconding or escaping out of jurisdiction.

21. It is further urged that in "no case could the Courts of the Native State try European British Subjects, and, if jurisdiction were not ceded it would happen that European British Subjects and others when jointly charged with the same offence would be tried apart by different Courts and under different laws." It seems to us that this objection is easily answered. We have Magistrates and Judges in our service who are European British Subjects and who are Justices of Peace; and, so long as we have a large number of European British Subjects settled in the Coffee Districts of Kadur and Hassan and in the Mining District of Kolar, we are sure to have European Officers in our Service. These Officers have power to try petty cases themselves and to commit offenders in grave cases to the High Court of Madras. This is all the power which can be exercised by Magistrates in the Civil and Military Station of Bangalore, if jurisdiction is transferred to the Government of India, and

this

this power can as effectually be exercised by those Justices of the Peace who are in our Service. Where a native and European are jointly accused of an offence, there may be some inconvenience, as pointed out in the Resident's letter, owing to separate trials being unavoidable; but this is an argument that applies to similar cases, arising all over the Province, which do not call for any special or exceptional treatment.

22. The last objection urged in the Resident's letter is, that "there would be no uniformity of procedure were each State allowed to adopt its own procedure and the Indian Railways Act is not applied." We have already pointed out that, in Mysore, the Railways Act is in force, as also the Indian Penal Code and Criminal Procedure Code, and all other laws and rules relating to procedure, evidence &c., which are in force in British India. So far as the Mysore State is concerned, there will always be a perfect harmony in procedure with that obtaining in the British Territory; as the existing laws may, from time to time, be altered or modified by the Durbar, so as to keep pace with British Indian legislation. Special arrangements have been made by the Durbar for the trial

trial of offences under the Railway Act. We have a District Magistrate, who is also a Justice of the Peace exercising jurisdiction over half the line, and we have another Magistrate in charge of the other half. We have vested our Amildars near the Railway line with 2nd class powers, so as to enable them to try offences under the Act. The sufficiency of these arrangements has been acknowledged by the Resident.

3. If entire jurisdiction be ceded by His Highness as now proposed, the Subjects of His Highness will be put to the greatest inconvenience. The Courts of Justice in the State which ought to be freely opened to them to resort to for the redress of their grievances will be closed to them, and parties and witnesses, even in petty cases, will be compelled to travel great distances and appear before Courts established by the Government of India and which Courts will not be so near to each Railway Station as the Mysore Courts now are. The system of judicature should be such as affords facilities for the enforcement of civil rights and for the punishment of offenders. Nothing could be more hard than driving parties and witnesses

to great distances from their homes - nothing can more tend to paralyse the arm of justice. The counteracting influences of different jurisdictions in the same territory can be more easily perceived than described. If a Civil Court issues a warrant to arrest a debtor, or if a Magistrate issues a summons or warrant to an offender, he can easily take refuge in a Railway Station and defy our Courts of law. The Railway, which runs through the heart of the Province, and which connects almost all the important Stations in it, will afford ample facilities to dishonest people to render our Courts powerless.

24. It may be reasonably presumed that it is the Subjects of His Highness who may oftener commit offences under the Railway Act than foreigners. If a boy flings a stone at a train near Harihar, or if a villager allows his cattle to trespass upon the line near Davangere, it is no small inconvenience, to them and to the witnesses concerned, to be compelled to attend a Magistrate's Court at Bangalore, at a distance of more than 200 miles; and it is humiliating to our Courts that our

Judges

Judges should be deemed unfit to try men for such petty offences, when they are deemed fit to try those very men for such a serious offence as murder or robbery, if the offence happened to be committed just outside the Compound wall of a Railway Station.

25. In conclusion, we beg to add that on a consideration of all that has been said above and the administrative advantages which Mysore specially enjoys over other native States, having been under direct British administration for nearly half a century, during which time the laws and administrative machinery have undergone a thorough process of assimilation with the British laws, we are emboldened to most humbly advise His Highness the Maha Rajah to make a further representation to His Excellency the Viceroy in Council; and we venture to express a hope that the decision of the British Government may not be unfavorable to us, if all the facts relating to the administration of justice in Mysore, the number and

qualifications

(16)

qualifications of European and Native Officers and the laws which are in force are represented in their proper light to His Excellency the Viceroy in Council.

24th August 1891.

T. T. Muthuswami Chetty,
Chief Judge.

Ramachandra Iyer

Millett Lua Martin

Judges.

Return of persons made over for trial by the Courts of the Mysore State under Act XXI of 1879 "The Foreign Jurisdiction and Extradition Act".

Year	District	No. of cases in which applications were made	Offences committed	Remarks
1887	Bangalore	1	Sec 409 I.P.C	Only for the half year ending 31st December 1887
	Kolar	1	Secs 446-380 I.P.C	
	Tumkur	Nil		
	Mysore	Nil		
	Kapsan	Nil		
	Shimoga	2	Secs 457, 380 I.P.C	
	Chittaldroog	1	Sec 379 I.P.C	
	Kadur	1	"	
1888	Bangalore	1	Sec: 366 I.P.C.	
	Kolar	1	Sec: 307 I.P.C	
	Tumkur	Nil	"	
	Mysore	Nil	"	
	Kapsan	1	Sec 381 I.P.C	
	Shimoga	3	Secs 379, 408 I.P.C	
	Chittaldroog	1	Sec: 325, I.P.C	
	Kadur	1	Sec 224. I.P.C.	

(17)

Year	District	No. of cases in which applications were made	Offences Committed	
1889	Bangalore	1	Secs 457, 451 I.P.C.	
	Kolar	5	Secs 380, 403, 411, 224, 353 302, I.P.C	
	Tumkur	2	Sec 324 I.P.C	In one case no change framed
	Mysore	2	Secs 392, 302, 395 I.P.C	
	Kapan	1	Sec 381 I.P.C	
	Shimoga	1	Sec 396 I.P.C	
	Chittaldroog	1	Sec 381 I.P.C.	
	Kadur	2	Sec 406 I.P.C.	
1890	Bangalore	1	Secs 457, 380 I.P.C.	
	Kolar	Nil.	"	
	Tumkur	Nil	"	
	Mysore	5	Secs 392, 302, 395-224 379 I.P.C	
	Kapan	4	Secs 380, 406 I.P.C.	
	Shimoga	Nil	"	
	Chittaldroog	Nil	"	
	Kadur	2	Secs 224, 380 I.P.C.	
1891	Bangalore	Nil	"	
	Kolar	2	Secs 406, 411 I.P.C	Only for the Half year ending 30th June 1891.
	Tumkur	Nil	"	
	Mysore	1	Sec 379 I.P.C	
	Kapan	Nil	"	
	Shimoga	Nil	"	
	Chittaldroog	Nil	"	
	Kadur	1	Sec 408 I.P.C.	

Memo on the question of Railway jurisdiction.

I beg to preface with the following remarks my observations on the papers sent to me for opinion. I do not understand the present question to be an Imperial one, or I should unhesitatingly counsel ready compliance with the wishes of the Supreme Government. Neither do I consider the matter to be one of sentiment only on the part of the Mysore Government or I would similarly advocate yielding the point. The objections taken by many Mysoreans to the Imperial Post taking the place of the local Anchay Department was in my opinion a question of sentiment, which should not be allowed to weigh against the manifold advantages of the Imperial postage system, though probably many a loyal native subject thought otherwise and regarded the transfer as loss of personal prestige to His Highness the Maharajah. Again similar objections and on like grounds were urged against the late Mysore State Railway being merged as it were into the Southern Mahratta Railway System. If it had been known at the time that this merging or hypothecation of

f our local Railway System was to involve ceding
plenary powers to the British Government over the
whole line and its Stations &c, I am certain that there
would have been a great outcry to any change of Systen
at all. It is difficult to gauge native opinion and though
in such matters; but I feel pretty positive that from the
lower classes up to the Representative Assembly and ever
I may add perhaps, including His Highness, such cessio
f Territory and jurisdiction is not regarded as a mere
matter of Sentiment alone; but as a question of wounded
susceptibilities or loss of "Abroo" and possible future
embarrassment. The victorious Germans were within their
ights when they demanded the cession by the French
f Alsace and Lorraine; yet how opinions differ as to the
dvisability of the demand, looking at the peculiar
emperament of the French nation and the rankling
ore it has created. The circumstances of the two cases
re of course widely and Supremely different; but still
he unwilling cession His Highness is called upon to
ake will to a certain extent be mortifying and
ound feelings in a manner which it is desirable to
void if possible. It must be humiliating to His
ighness the Maharaja to be reminded every time
e has occasion to travel that even in his own

Territory

Territory and on his own Railway he cannot journey without passing into local jurisdiction other than his own. Again when he has to receive distinguished guests in his Territory he must depend upon other Police than his own for enforcing order or taking care of their Safety on the Railway and what is even of more importance, in an Oriental point of view, whether as regards His Highness or his Princely guests, His Highness will have to depend upon the courtesy of foreign officials for those customary marks of respect and honor which properly and I think of right should devolve on his own Subjects and officials. The Maharajah too as a constitutional Prince will have to account to his Subjects for thus abdicating, as it will seem to them, some of his most important Princely functions and how can he satisfactorily do so unless cogent reasons of Imperial Policy ~~it~~ strong than those put forward in the papers furnished to me can be assigned by him as the cause of his cession of Territory with its attendant complications so far as the Mysore Police are concerned.

2. I again respectfully repeat that I am writing this Memo on the Supposition that the question under discussion is not one affecting the Safety or interests of the Empire when loyalty would demand every sacrifice on the part of His Highness and his responsible advisers. I rather regard it in the light of a question of

of mere administrative convenience of no overwhelming force and open to discussion on its merits both legal and equitable.

3. There has recently arisen a discussion between the Government of Madras and His Highness' Government as to the right of the latter to impound water for irrigation purposes in its own feeding grounds. The question apparently is one of riparian proprietorship dominant and servient rights and so on; yet it was contended at one time that Mysore as a feudatory could not rely on the law applicable in such cases, but must acquiesce in taking the position that may be assigned to it by the Paramount power; even arguments such as the following being used, namely, that as a small State like Switzerland would not be allowed by the European Powers to divert a navigable river such as the Rhine from its accustomed flow or current, so neither could Mysore divert irrigation water for its own purposes unless it had permission of the paramount power so to do. This contention, it is needless to state, alarmed or irrigation Engineers and discussion arose; and s in that case, no offence was taken at Mysore or arguing for its own rights, so, in the present case, trust that I may be allowed the liberty of saying a few words on the practical aspect of the question, more especially as it affects my own particular

particular Department namely the Police.

4. I shall first deal with the reasons (a) to (d) urged in the Resident's letter No. 1012-479-8 of the 2nd April 1891, No. 23 of the printed papers. The objection urged here, based on the delay involved in the procedure of putting the Extradition Act into force, is applicable not only to offences committed on the Railway, but also to those committed in other parts of Mysore, in which the offenders may happen to escape into British Territory, with this difference, however, that in the case of offences committed on the Railway, the facilities for preventing the offender from escaping from Mysore are much greater than in the other. An efficient Railway Police ought to be able to arrest the offender on the spot, without any chance of escape. The field for the commission of offences on the Railway being circumscribed, it must be easy to spot and arrest the accused and there should be little need for applying to the Political Agent for rendition. During the time that the Durbar Courts have been exercising jurisdiction over the Railway, it will be seen, that there have been no cases in which there was any necessity for putting the Extradition Act into force. In practice, therefore, the inconvenience

Reason (a)

assumes

assumes an insignificant form.

It is not only the Railway Act of 1879 which applies to Subjects of Her Majesty in Native States. Neither is the applicability of British Indian laws confined to the Railway. Section 8 of the Foreign Jurisdiction and Extradition Act extends the British Indian laws relating to crime and criminal Procedure to European British Subjects in Native States and to Native Indian Subjects of Her Majesty in any place beyond British India. No practical inconvenience has been occasioned in the Courts of the Durbar administering justice in Mysore in accordance with this provision of the Foreign Jurisdiction Act, nor is any likely to arise from the Courts administering the Railway Act to Subjects of Her Majesty. The Durbar is prepared to extend to Mysore the Railway Act in force in British India without any modification. The Durbar is prepared also to extend to the Railway any other enactment or orders, the introduction of which may be desired by the Government of India for the purpose of facilitating the administration of justice on, or the management of, the Railway. Reasons (b) and (d)

5 This objection again is not confined to the Railway. Courts in Native States cannot try European British Subjects offending in other parts of their dominions Reason (c)

with

either; Section 6 of the Foreign Jurisdiction Act is intended to remove this difficulty. The Government of India under this section appoints its own Justices of the Peace. This Solution of difficulty is capable of application to the Railway line equally. Under the Durbar, there are no less than 6 Justices of the Peace so appointed, one at Mysore, three at Bangalore, one at Chickanagalore, in the Kadur District and one at the Gold Mines, Kolar District. Colonel Campbell, the Justice of Peace and District Magistrate at Kadur, exercises Jurisdiction over the Railway line from Tiptur to Harihar. The Durbar has also expressed its readiness to constitute the Railway into a District by itself with a European District Magistrate at the head of it.

7. The relations of the different States to the Federal or Central Government in the United States and Canada are essentially different from those which exist between the Native States of India and the Paramount power. It has to be noted that in the Federal or Central Parliament, each State is represented by its delegates. It is also believed that there is equality and reciprocity between the different States as regards the rendition of offenders against their laws; and no State is in a position of disadvantage, having to obtain Extradition through the Political Agent. The relation of Feudatory and Suzerain does not obtain between the different States and the Central Government. Where perfect

equality

equality is recognised, there can be no derogation in transfers of jurisdiction for common advantage; nor is such transfer likely to be misconstrued by the subjects. The analogy, therefore, of the Commonwealth of the United States and the self-governed Colony of Canada does not seem to be appropriate, especially when we consider that the laws and usuages of some of the States of America are so startling and diversified that it is undoubtedly a convenience, if not even a gain, that the Federal Government of the Union should have sole jurisdiction over a line running through many States. Let us on the other hand suppose, on a long line of Canadian Railway, a small foreign State intervened, which wished to have its own Railway Police and Magistrates and had proved its capacity to do what was required, would any interference be called for or evoked against such natural wish? I apprehend not (unless it was intended to resort to the law of force.) Take also the case of Railways on the Continent running continuously through, say, Italy, Switzerland and France; there is no inconvenience or question of Railway Police, as far as I am aware. Each Country has its own Police at its own Railway Stations, the only and, in fact, grave inconvenience arising as regards Custom duty. In fact, the same rule prevails in India, where each Presidency provides its own Police for Railway Stations. The uniformity of procedure, on which so much stress is laid in the Resident's letter above quoted, is easy of achievement in the

Case

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etter above quoted, is easy of achievement in the

Case

case of British India, and I maintain emphatically that it is equally easy of accomplishment in the case of Mysore -

2. The position of Mysore is widely different from that of other Native states in India. Mysore has enjoyed the advantage of 50 years of British rule. Its administrative machinery is cast in the British Indian mould and its judicial Tribunals are consituted on the same models. The laws and procedure are identical or are framed on identical lines. The system of open Courts with representation of parties by Counsel, inseparably associated with the British Constitution, has become the established custom here. The administration is conducted by the Native officers who have received Western culture. In important places of responsibility the managing agency is manned by Englishmen. The official correspondence in all the higher offices is conducted in English. The Mysore administration is nearly as advanced as some of the British Provinces themselves. Mysore therefore occupies a position, among Native States, peculiar and unique and has claims on the consideration of the Paramount power, such as no other Native State has or can cite as a precedent. It may be that, in the other States quoted, the Police and Magisterial work are not conducted on British Indian lines and that the

It may likewise be that no other Native State can readily find the necessary material for the constitution of the agency for the exercise of that jurisdiction. It may, therefore, have been sound policy on their part to abdicate in fact to the Government of India the exercise of powers, to the responsibilities of which, they may have felt themselves to be unequal or which they were glad to get rid off as involving more than they were capable performing efficiently. But in Mysore the case is different. Here it was found as easy to work a Railway Act or Acts, rules regarding Railways under construction and running lines, accidents &c as in British India. Proof of this is afforded by the fact that when Police functions were assigned to the Mysore Police on the length of line some 300 miles from Mysore Harihar, I had no difficulty whatever in nominating from the existing force and not from outside very competent Railway Police Assistant, very efficient Police Inspectors well conversant with English and competent Police Constables. "These arrangements" to quote the words of the Resident have been efficiently and loyally carried out and no cause of complaint has arisen."

7. It is difficult to exaggerate the serious practical difficulties

difficulties which must very soon arise and develop
from the proposed transfer of jurisdiction. I view
with apprehension and almost with dismay the serious
embarrassment which must follow from the Province
being split from one end to another by a strip of
Territory over which we shall have no control. If the
question of Extradition and jurisdiction over
European British and other subjects on a small area
of Railway line should be felt to be an inconvenien
how much more perplexing will it be to the Durbar to
have Mysore traversed by a belt of ever increasing
country within which it will have no power whatever
With each extension of the Railway, the difficulties
will increase and will be intensified. The Police
administration will be the principal Sufferer fro
the proposed alteration. With the expansion of the
Railway, the criminal classes of the Province are
entering upon a new phase of existence. With
facilities of communication, their resources also
multiply for eluding the vigilance of the Police. In
Mysore as well as in every other Province, the Railway
Police is the Key to the Provincial Police administrati
At present the Railway and District Police form one
body and under one head and are accordingly able
to act in unison. If the proposed transfer is effecte
and the two bodies are separated, the present
facilities for ready interchange of information an
prompt Co-operation for the purposes of prevention and
detection of crime will cease, with the inevitable resul

that each of the two forces will throw the blame on the other and the efficiency of the Police administration generally will suffer. Neither of them can be expected to act in concert with the other with the same amount of interest and fear of punishment as if both were under the same departmental head. A criminal has only to cross the hedge of the Railway line to be out of the power of the Mysore Police and then we will have to depend entirely upon the help of the Police of the Assigned Tract; and vice versa. The necessary consequence of this will be friction, irritation and mutual dissatisfaction. It must be remembered that this is not a small strip of land; it is nearly 300 miles of Railway traversing the heart of the Province and almost every district in it. With the Hindupur extension, which will follow suit, and with a network of other Railways, in possibility, necessary for protecting the Province from famine and for developing its resources, our difficulties will be considerably enhanced in dealing with the ramification of crime which will develop with increased means of rapid communication, which will open up the Province to the criminal classes from beyond Mysore. The capacity of the Durbar for grappling with crime will be greatly crippled and the State will find itself in a situation of embarrassment in the discharge of the first functions of all governments, namely, the protection of life and property.

2. A foreign Railway Police will naturally centre its

its attention mainly on the efficiency of its arrangements as regards the Railway line itself. A local Railway Police under my direct orders, goes much further and watches bad characters, thieving classes and the like, not only in view to their possible depredations on the line of Railway, but also with the object of giving timely information to the district Police. If they neglect this important part of their duty, I have the power of punishing them but such power of prompt punishment disappears as soon as a foreign Railway Police is introduced. With such introduction I lose the key of my position and will have to depend upon the sufferance or good will of a Police which will in fact be my subordinates in point of position. In fact I shall be placed in a very akward position at times and one which will certainly not tend to the general efficiency of Police Matters throughout the District.

11- As I am limited as to time in sending in this Memo, I am unable to enter into details as to the grave delays and inconveniences which will arise with every addition of Railway lines under the System proposed by the Supreme Government. What the rendition of a prisoner arrested in British India implies including, of Course the Railways, in its forms and tedious procedure can only be known to the initiated. Even direct correspondence is denied to us. We must send our letters through the Dewan to be forwarded by

him to the Resident to be passed on to the British India Office we are addressing. The Resident is perhaps at Coorg and the Dewan may be on tour and the terrible delay and obstruction consequent thereon can easily be imagined. If the cession of Territory required by the Supreme Government is conceded, a criminal even for the most petty offence has only to get on the Railway line, carriage or Station to be free of our jurisdiction, till the lengthy details of Extradition law are sufficiently carried out to authorize the British Railway Police in handing over the offender to the Mysore Police when the chance of conviction after such lapse of time may become uncertain, even if the prisoner should be found at all.

L Ricketts
Inspector General of Police.

23rd August 1891.

Inhalt
30.8.91

Vice Chancellor
Punjab University
Lahore

21 Aug. 91

My dear Rivaz

I enclose a paper
of the Govt. of India sup-
plementary to Notification
& the Director of Public Instruction
Punjab in the Education Dept
Resolution, and
the Rules, & other Enclosures

Ants. We have already ceded
jurisdiction

If the matter is to be further
pressed much stress must be
laid upon What you have
already admitted to have taken
long prominently... namely
that Mayor does not claim
exceptional treatment on
the ground of being Mayor

more important than other
British states, but because of
the unique position in which
the fostering care of the British
State itself has placed her.

What other State has had
50 years of British administration
the closing ones of which have
witnessed the passing of both
British administrators to the
Volga and embark upon

of their forefathers. This
experiment of Independent
States first in India then
(with possible circumstances
attached to the present internal
state of affairs in India but also in
England by those who desire
to see Native States ruled
loyally but successfully
governing their dominions
and it will be almost

of their forefathers -- The
experiment of Independent
Native Govt is under these
quite peculiar circumstances
watched with great interest
not only in India but also in
England by those who desire
the future Progress not only
Loyally but successfully
governing their dominions,
and it will be almost

I Shall proceed ...
experiment of Independent
State but it is under the
most favourable circumstances
attended with great inter
est and in India but also a
warfare by those who desire
the Native Princes but
loyally but successfully
governing their dominions
and it will be almost

Instrument for surveying the
the Coefficient has been
Immersed - If a failure if
a Greater degree of confidence
cannot be placed in the
Hymn of Ministration than
in that of other States -
being further the Hymn
is harmonized in all
sides by long settled

British District Show Exhibit
is now before his eyes — that
he has a Considerable
European Hunting Grounds
for an Entire Season
just at his hands, as
has the Courage to Meet Com
bining Perfection which is
to be found in Southern India

many Thom-turbulence of
a kind is unknown.

It seems hard to lit
the "Whatever construction
may be put upon terms or
bonds" but it seems
still but admit that they
can be construed in a
sense opposed to their

(5)

Transfer of Railway jurisdiction
to the British Government (65)

In accordance with the Durbar's wishes, as communicated in Memorandum dated 19th inst, I beg to offer a few remarks on the above subject.

I observe that suggestions are asked more as to the course the Durbar should adopt in the very trying position in which it is placed, than with a view to any further elucidation of a question which has already been well threshed out. When giving any suggestions one must be credited with having at any rate formed some opinion on the question at issue and I therefore briefly allude to a few of the leading points in the controversy which the printed papers circulated throw light upon.

H. H. the Maharajah (No 16 & printed papers) disclaims any desire whatever to discuss the question as one involving a consideration of rights and obligations. Consequently the question narrows itself to one of whether the Govt of India will not find itself able, & on a reconsideration of the many strong points made in the correspondence, in favour of such a course, to meet the wishes of a loyal State like Mysore under circumstances which, as affecting the Railway, no one can regard as other than special in the strongest sense of the word.

In the earlier letters of the Govt of India the opinion

that the management of the Mysore State Railway had been remain in the hands of the Native Govt was given not only emphatically but, so far as I can judge from the printed papers, without any reservation; nor was it until 12 Oct 1881 (No 5 of printed papers) that the first hint of what now turns out to be the final decision of the Govt of India was made and, even then, only a closer control on the part of the Govt of India was suggested in the event of the Mysore line becoming connected with the general system of Railways throughout India. A certain amount of supervision, but not full jurisdiction (see Enc 1 to No 5 of printed papers), was stated to be necessary while any wish to interfere in the details of the management of the Mysore State Railway was disclaimed, and this too notwithstanding that so early as 1877 (No 6 of printed papers) the very clearest conditions were promulgated upon which the lands occupied by the Bangalore branch Madras Railway could be held, and other lands, which might be required by the British Govt for Railway purposes in Mysore, could be acquired. Here we have the clearest admission and indication by the Govt of India of the immense distinction which could be drawn between, a Railway such as the Mysore State Railway and those of such Railways as the Governor General's Notification applied to.

The special circumstances of the Mysore State Railway have been fully described by the Dewan in his Memo (Enclosure 1 to No 12 of printed papers). To me it seems perfectly clear that Article No 15

of the Instrument of Transfer would require to be very much strained to be rendered applicable to the Mysore State-Railway: so recently as 3d Nov. 1869 Sir C. Elliott informed the Diwan (No. 20 of printed papers) that, so far as he knew, the Govt of India accepted the Maharajahs jurisdiction and did not press for any cession of Police civil, or criminal jurisdiction to Railway.

All the above however and much more has already been ably urged and has been considered by the Govt of India. I can only suggest that if a further appeal is to be made to the Govt of India it should be supported by information compiled from the records of the present Railway jurisdiction showing how far the desiderata, enumerated (a to d inclusive) at Para 1 of the Residents letter No 1012-479-8 of 20 April, are likely to come into play at the same time pointing out the eminently satisfactory working of the jurisdiction now exercised.

I cannot however dissemble from myself that the Govt of India have, with in possession of the fullest information and arguments that could be urged, almost foreclosed discussion and any yielding up of their present request by the very decided tone of their last decision. It appears to me that the Govt of India is anxious to avoid any appearance of inconsistency in its dealing with Native Govts but surely the circumstances past and future of the Mysore State-Railway are such as to furnish the fullest justification of any special indulgence in the case of Mysore.

I do not know how it would answer to ask for a further trial of the present existing arrangements for a period of 3 or 5 years.

I need scarcely say that I have

heard but one opinion, on the present question, so far as it bears upon the convenience of the Public, and that is that the existing arrangements suit both the Public and the Railway and are most economical.

(J) 22/8/41

C11

Maya Macintyre
Opinion

I must premise this by saying I do not feel quite at liberty to criticise any order of the Govt of India. I can however conscientiously say there does not seem any good reason, so far as the State and people are concerned, for the proposed transfer. The Police arrangements are good, and the hall most convenient - as I have had frequent opportunities for judging. But after reading letter 23 in the file I am of opinion it would decidedly more politic to yield the point and His Highness be send in the last proposal and secure some modifications in the proposed arrangements.

C Macaulay

21/8

79) Col Bowers opinion

I am asked to study the subject of the proposed transfer of Railway Jurisdiction in Mysore to the British Government and to record my views as to what the Durbar should do. I hope it will be understood that an officer in my position, in the service of the Government of India and directly amenable to their regulations on the one side, on the other owing temporary allegiance to the Mysore Government during my period of employment in the State, must necessarily be hampered in expressing his opinion on a subject bearing mainly on the political and diplomatic relations existing between the State

and

and the paramount power, and only remotely connected with the Administration of Public Works.

However, I shall endeavor to dismiss all bias from my mind and treat the question at issue as fairly and independently as I can.

The history of the Ellypore State Railway and of the transactions which have led up to the present position has been so clearly set forth in the Dewan's letters and minutes embodied in the printed file of papers that it would be superfluous for me to enlarge thereon. I can add nothing to what he has advanced in favour of the retention of Railway jurisdiction by the Ellypore State, so will confine myself to the points that strike me as susceptible of further arguments.

The main contention

on

on the part of the Durbar appears to me to be that the abandonment of the jurisdiction over the Udypore Railway would lower their "prestige" in the eyes of the people.

The Government of India on the other hand assure His Highness the Maharajah that the change now in no way be derogatory to His Highness' Government. Now it must strike a candid observer that, whilst the Government of India have doubtless the best of reasons for asserting that there will be nothing derogatory in the transfer in the eyes of the other States and Administrations of India, the Durbar of Udypore must be the best authority as regards the feelings of their own people on the subject.

K

of may are convinced that their Government must fall in the estimation of their subjects, if they give up unconditionally all legal control over the most important work in the country, there is reason in their opposition to the transfer, and it would be but a graceful act on the part of the paramount power to yield to the wishes of the people, provided no serious derangement of the Indian Railway Administration machinery as a whole is likely to result from such a concession.—

It may be said that this is all mere assumption and sentiment. Some regard is certainly due to the real and unanimous sentiments of a people, though baseless or ill-grounded in the eyes of

others

others, but I must beg leave to doubt whether, in regard of the assumption that the people as a whole are decidedly against the transfer, from sentiment or other causes, the vast majority care anything about the matter. The proposal in no way affects their material welfare, the facilities for travel, for their buying and selling. They are fully aware that they enjoy the benefits of an enlightened and impartial rule, and I believe they care not a jot whether the Railway they travel over in peace and comfort, over which their goods are carried cheaply, is under the sway of a special police independent of their ordinary Magistrates or not. One thing I am convinced of, any little grain of sentiment on the subject there may be, will be brushed away in a very short time, Should it.

the convenience and com-
forts of the Railway as
they now exist not be
lessened-

When the transfer of
the old Mysore "Dawk"
to the Imperial Postal
Department was first
mooted, a cry was raised
against the abolition of
the old local post which
had done good service
in its day. That transfer
too was deemed derogatory
to the State, an infringe-
ment of guaranteed
rights. But the transfer
was effected eventually
without friction or dis-
arrangement of the
postal machinery and
how much of the old
sentiment on the subject
now remains? The
transfer has left no
soreness so far as I am
aware.—

I have said above
that it would be a grace-
ful act on the part of

the

the British Government to concede to Khyber absolute jurisdiction over its own railway, provided no administrative inconvenience is likely to ensue. This brings me to the mainspring of the issue, the alleged administrative inconvenience. I am not conversant with the ordinary legal machinery of a railway and its working, and am therefore little competent to offer an opinion on the point, but it seems to me a good deal may be said on both sides of the question. The main reasons cited by the Resident in his letter No. 1012-479-8, of 2nd April 1891, are doubtless sound and just, but it does seem absurd that when in the course of years the Railway comes to be redeemed by re-payment

management and working of the traffic will fall to officers in the employ of the State, whilst crimes or offences committed thereon or within its boundaries can only be dealt with by a foreign police and magistracy, although the general laws and legal procedure of the State are exactly the same as those of British territory and its criminal machinery admitted to be as effective.

But it is apparent that the Government of India have made up their mind that it is in the general public interest that they should hold universal railway jurisdiction, and having after full deliberation arrived at this conclusion they cannot draw back from the position. I can only then advise that

the

the Durbar disregard
the Sentimental side
of the question and yield
the Concessions with a
good grace. —

Colonel C. Ma

Bangalore
20th August
1891

Tuticorin August 2
1879.

Sir,

I beg to acknowledge the receipt of your D. O memo of yesterday calling for opinion about the transfer of Railway jurisdiction to the British Government.

2. If the transfer is on the ground of public convenience, I beg to state that to my humble thinking such convenience will not be secured by the change: It will on the contrary be lessened. Instead of the offences in the line being reported then & there to the officers on the spot & noticed by them immediately, they will have to be intimated to those stationed far away & this means delay & inconvenience

to the parties. — I have been in the Railway Dist^{t} ever since the opening of the Extension to Harihar and am personally aware of the inconvenien occasioned to the passengers by the transfer of a portion of the line from one Dist^{t} to another. Owing to the journ from one Dist^{t} to another, parties have sometimes actually given up pressing forward their complaints. They complained to the local Dist^{t} Off^{r} & when he said that this line had been transferred to anot Dist^{t} & that they should go thither they g & went away. — While such is the case when a small part of the line has been transferred to an adjoining Dist^{t} the inconvenience resulting from the whole of the line being placed un Officers stationed far away can be eas imagined. —

3. In his Letter No. 1012 of the 2nd Sept. 1891 [illegible] has stated that no cause of complaint has arisen from the present arrangements.

4. I am therefore of humble opinion that the proposed transfer is not calculated to increase the convenience of the public.

I beg to remain,
Sir,
Your most obedient servant
[illegible]
Deputy Commissioner of Lands

To
F. Arundel Esqr. Esquire B.A.
Chief Secretary to the Govt.
of Mysore

Confd

2/18/91

My dear Mr. Sheshadri

I herewith forward
note & print Ram
your Circular
dated 19 & 20 ult.

You will see I ha
omitted to go into
detailed reasons
and arguments
which I think can
be more fully
ably & exhaustively
done by yourself
& Officers & Legal

experience.

But as to procedure there is to my mind only the one way of this I have noted & which may eventually be supplemented by appeal to the Secretary of State.

Will you kindly consider this letter & my enclosed note as strictly confidential on behalf of Archeus

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Sly

of the Durbar.

I send the enclosure
in original draft
at same time.

Believe me

Yours very sincerely

H. Grees.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Confn

Mr Grover's Opinion

Note on the question of transfer of Pol. Jurisdiction in Mysore & the British Government.

The present position of the question is that the Legislative Meeting of the Governor General's Council has been strongly urged & insisted on in official circles and to influence the Foreign Minister who works directly under the Governor-General, who, in his supreme capacity as Viceroy can, however, over-rule his Council.

No 23 of the printed papers communicates, for the first time, some of the main reasons of the Legislative Council and conveys final orders of the Govt of India, without affording the Durbar an opportunity of making any representation.

The reasons of the Legislative Council are all of a purely legal nature and from conversations I have held the Inspector General of Police and the Legislative Secretary, thereon. I find that they are, one or other, fully cognizant of all pros "& cons" on all points which have come within my experience.

Leaving all details contained in the printed papers for the more able & exhaustive treatment of the Devons and leading Officers of the Staff who are well versed in the matter I will therefore come to the point raised at the close of the second paragraph of the Devons circular, dated 19th inst.; and express my opinion

regarding procedure 87)

The Durbar should reply fully & such by the main reasons of the Legislative Council as intimated in paper No 23 and request & be informed of all the other reasons which have not been communicated & them, and the Durbar should Represent that on opportunity of further reply & the reasons, not yet communicated & them, may be afforded them. They might even express surprise & regret at not having been accorded ~~opportunity of further representation~~ before Council their representation be received unfavorably by the Govt of India, the Durbar should then make special representation & the Viceroy in his supreme Capacity above his Council, and very considerable weight would be added & the representation by a personal appeal by

His Highness the Maharajah
showed it to me immediately
for him & visit the Viceroy
at Calcutta after return
& the latter from Simla

H. H. Risley

Simla
21/8/94

(10)

My dear Sir,

I have carefully read the printed papers on the subject of the proposed transfer of plenary jurisdiction over Railway Lands in Mysore, and it seems to me that His Highness the Maharaja will be well advised to seek a further consideration of the question at the hands of the Government of India and I have no doubt that any representation which His Highness may be allowed to make, will be considered by the Supreme Government with every sympathy

sympathy and attention
2. If there were nothing
in the question except
that it follows so close
on the recent transfer
of the Railway to the
Southern Mahratta
Company and the
Mysore Postal Depart-
ment to the Imperial
Government, the cir-
cumstances attending
these transfers would
seem to furnish suffi-
cient reason why the
Imperial Government
may be persuaded to
deal ~~gently~~ tenderly with the
susceptibilities of
Mysore in regard
~~to~~ plenary Jurisdic-
tion over its own
Railway

Railway, a Railway
started as a famine
relief work, Construct
under Considerable
difficulties, only as a
local Connection betw
important Centres in
the Country, and devel
so as indeed to becom
Connected with great
trunk lines of Imperial Rai
-ways in British Indi
but developed on a
narrow-gauge, and
purely for purposes of
local famine protectio
3. It is stated tha
the question has no
arisen out of the tra
-fer of the State Rai
-way, and that the
request for cession
jurisdict

jurisdiction would certainly have been made if the working of the line had still remained in the hands of the Mysore Government. The requisition is made on the ground that it is absolutely necessary as a question of Imperial policy, that the Govt of India should exercise control over any Railway in a Native State which forms part of a line of Continuous Communication, and that in order to exercise this control, it must have jurisdiction over it. In illustration of this positive 4 classes of administration

administrative inconveniences are pointed out, which must arise if jurisdiction were not ceded - and the cases of Baroda, Cashmere and Hyderabad are adduced as examples in which Native Governments have, in conformity with this policy been required to cede jurisdiction.

4. There can be no doubt whatever, of the wisdom and necessity of this policy in the case of most Native States, which still possess the liberty to make and unmake their own laws and frame &

Vary

vary their own Codes of
Procedure and maintain
varying standards of
administrative efficiency
irrespective of conditions
existing in British India
But the Government
of India may well
consider that Mysore
is altogether different
from such Native States
and that in its case, there
is as little need for exten-
ing to it the Imperial
policy in question as to
any part of the Bombay
or Madras Presidencies
where the requirements
of administrative Con-
venience have called
for no further provision
than that contained
in Section 184 of the
Criminal

Criminal Procedure Code,
by which Railway offences
committed in any part
of the Presidency may be
tried at the Presidency
Town, if the parties and
witnesses be in the Presi-
dency Town.

5. I would even venture
to submit that as
Imperial policy confers
Stars and Ribbons, Titles
and Salutes in recogni-
tion of the loyalty and
dignity of Native Princes,
so it may, in recognition
of administrative ability
and efficiency leave
undisturbed where it
exists, and even confer
where it does not exist,
Plenary jurisdiction on
lines

lines of Railway passin
through their territorie
Such a Course would
perhaps even more tha
mere Honors and digni
ties stimulate good
Government where the
may be wanting. If
in its domestic policy
the Government of Indi
would throw open some of th
highest Offices in the
public service to Native
of proved capacity and
confer on them high func
tions, as high even as tha
of trying European Britis
subjects, would the Gov
of India be unwilling to
pursue a similar course
in the case of Native
States, and use it as a
lever for raising most
ill governed States to

the

the condition in which they ought to be. If Hyderabad and Cashmere furnish themselves with the guarantees for good government which have been secured in Mysore by the Instrument of Transfer and if they succeed in securing from the Imperial Government the approbation of their practical administration which even in the course of the discussions on the present question, the Government of His Highness the Maharaja of Mysore has received from the Imperial Government, then, and not till then, will the cases of Hyderabad and Cashmere be

analogous ~~with~~ that of Mysore.

6. Next, as to the four classes of administrative inconvenience which would arise if plenary juris-diction were not ceded.

7. The first class relates to the delay in the administration of justice which would occur in cases where the Native States had to apply for extradition from British Territory, and the argument is that, such delay would disappear, were the juris-diction ceded to the British Government and remain in its hand

Delay arising from the requirements of the

the Extradition Act are certainly an inconvenien But the remedy proposed is more serious than the disease. It is, as a Mahratta proverb says, cutting off the throat for cough! If all Native States in India were like Mysore, the Extradition Act would be unnecessary; and the fact that Mysore is what it is points rather to be abolition of extradition procedure, than an extinction of its plenary jurisdiction. If its plenary jurisdiction must be extinguished for overcoming Extraditio difficulties, plenary jurisdiction will have to cease, not merely on

To extinguish plenary jurisdiction, because owing to the Extradition Act, there is some inconvenience in exercising it.

on Railway lines, but almost over the whole State. The argument thus proves too much. Bound, as Mysore is, in its relation with the British Government by an engagement such as is comprised in the instrument of transfer, an engagement which requires the State not only to respect the advice of the British Government, but also to make or modify no laws without the approval of the British Government, and to maintain the machinery of Government at the British standard of efficiency, and fulfilled

as

as that engagement has
been in the manner
testified to by the
Supreme Government
itself, it may well be
seen by the Government
of India, that, in view
of the occasional evasion
or failure of justice in-
cidental to procedure
under the Extradition Act
and of the requirements re-
peatedly urged of the
large vested interests of
the Coffee planting Com-
munity, there should
be complete reciprocity
between the British and
Mysore Governments
in regard to the surren-
der of fugitive Criminals and the
~~their~~ amenability to
justice should be faci-
litated by dispensing
with

with the Extradition A
altogether - Again, on
main purpose of extra
-tion engagements and
pro-cedure, is to secure
the trial of an offend
at the place where h
offended - It follows
-that a way of surmou
-ing the difficulties i
-cidental to extradition
should be found not
the sacrifice of facilities f
trial on the spot by
the nearest Competan
Magistrate with his
local Knowledge an
local experience.

8. The second clas
of inconvenience aris
from Mysore retain
its plenary jurisdicte
over its Railway lin

is indicated in the remark
that "Were jurisdiction
"not ceded, it must
"be divided; for the
"Indian Railway Act
"of 1879 extends to subject
"of Her Majesty on all
"Railways in Native States
"independent of whether
"jurisdiction over the
"Railway has or has not
"been ceded". As a matter
of fact, does section 1 of
the Railway Act confer
on Her Majesty's tribunals
jurisdiction over a subject
of Her Majesty, who may
offend against the Mysore
Railway and remain in
Mysore? and does it
take away the jurisdiction
which the Mysore
State possesses over
such an offender? If
the

the answers to these questions be in the negative, the force of the argument is not apparent. On the contrary, the fact that under the existing law relating to surrender of fugitive offenders, a Mysorean offending against the Mysore Railway and taking refuge in British India, is not amenable to justice, points at least to the expediency of enlarging the schedule of extraditable offences and not to the extinction of a sovereign-right to plenary jurisdiction alike over the limited class of offences against a Railway and over the much larger class of offences under the Penal Code

Code of the country.

9. The third class of inconvenience arising from Mysore keeping plenary jurisdiction over its Railway is stated to arise out of the incapacity of the Native tribunals to try European British subjects, and to consist in the contingencies which would arise (if jurisdiction were not ceded) in the European British subject and others when jointly charged with the same offences, would be tried by different Courts and under different laws. As to this, it may be submitted that the contingency of the same offence being tried under

under different laws would never arise so far as Mysore is concerned, because the laws of Mysore are (for all the practical purposes of the question under discussion) identical with the laws of British India and will always be so in the future - The contingency of the same offence being tried by different Courts would arise certainly - But with large European and Eurasian settlements in the Mysore State would such a Contingency arise on the Railway line alone ? - And has not provision already been made for such Contingencies by the

the appointment of
European Magistrates
and Justices of the Peace
before whom both the
European and other offend-
-ers who have jointly
committed an offence,
may be jointly tried?
These arrangements are
as old as European
Settlements in the country
and since the advent
of the Railway in various
lengths, have been con-
-temporaneous with
Railway administration
during the past ten
years or so - They have
admittedly been working
efficiently and satis-
-factorily

10. The 4th and last
administrative con-
-venience which would
be secured by
extinction

extinction of Native State
plenary jurisdiction
in the Railway lines
we is stated to consist in uni-
formity of Procedure
secured by the application
of the Indian Railway
Act. If jurisdiction
is not ceded to the
British Government,
each State would, it
is argued, have to try
to frame an adapted
Railway Act, whereby
uniformity of procedure
on the different lines,
would be considerably
impaired. There is con-
siderable force in this
argument as applied
to Native States whose
laws and administrative
machinery and method
of working them will
not

not accom of a ready
and wholesale incorporation
of the Indian Railway
Act into these Statute
Books. But the argu-
ment is not applicable
to the Mysore State,
in as much as, as a
matter of fact, the In-
dian Railway Act of
1879 is in force in Mysore
and the new Act can be
brought into force into
Mysore by verbal allér-
ations as simple as the
substitution of the word
"Mysore" for the words
"British India", and
the words "Government
of His Highness the Maha
Raja of Mysore" for the
words "Government of
India". As this is a
fact which no other
Native

Native State is able to
accomplish, so, the cession
of plenary juris-diction
necessary for administra
tive convenience in other
Native States need not,
the Government of India
may be persuaded to see,
be demanded in the
case of Mysore, they
may well rest assured
that by letting Mysore
keep its plenary jurisdic
tion, there would be
quite as much uniformity
of procedure, as by
letting the Madras
and Bombay Govern-
ments keep plenary
juris-diction over the
portions of the Bombay
Madras line which
are respectively within
the Madras and
Bombay

Bombay Presidencies.

11. So much for the administrative inconvenience apprehended by allowing Mysore to keep plenary jurisdiction over its Railways. But a thought is due to the administrative inconvenience which would arise by the transfer of jurisdiction which is asked for. This inconvenience is so patent, that it is unnecessary to detail it here. The Foreign Office of the Government of India has experience of the inconvenience which arises in some parts north of us where British and Native States

- lace each At.. - in
the Mysore
itself, the Government
received Complaints
of inconvenience from
local officers by the
Railway Police and
Railway Magistracy
being at first inde-
pendent of the local
District Magistrates,
so that the Govern-
ment had to modify
the arrangements some
what and make the
Railway Police and
Magistracy in a way
amenable to the authority
of the local District Magis-
trate. And unity
of jurisdiction throug
out a Railway line
is not to be mixed

a

give jurisdiction to the District Magistrate of Chingleput over the line of Railway in the District of Coimbatore, nor as to make the Government of India think fit to extend the jurisdiction of the Government of Bombay into the territories under the administration of the Government of Madras. In addition to all this, it is well known how many wronged people will not complain, if for complaining, they must go to places and tribunals which are

families.

12. Thus, in short, the admitted fact that Mysore is a well governed Native State, guaranteed to be well governed, and sensitive to British influences, dominates the Question. An Imperial policy applicable to ill-governed States is not applicable to it. On the other hand, it deserves to be so managed by treaties that Native States may find it worth their while to emulate its example.

With best re